

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF PROVIDENCE, Individually and on Behalf of All Others Similarly Situated,)	
)	No. 11-CV-7132 (CM)(GWG)
)	
Plaintiff,)	<u>CLASS ACTION</u>
)	
vs.)	
)	
AÉROPOSTALE, INC., THOMAS P. JOHNSON)	
and MARC D. MILLER,)	
)	
Defendants.)	
)	

LEAD PLAINTIFF’S RESPONSE TO MOTION FOR RETURN OF BOND

Lead Plaintiff respectfully submits the following response to Donald Robert Pierson's ("Pierson") Motion for Return of Bond filed on September 28, 2015 (ECF No. 84) and Pierson's subsequent Notice of Motion for Return of Bond, filed on October 5, 2015 (ECF No. 85).

On June 6, 2014, Pierson filed a Notice of Appeal with this Court (ECF No. 73) informing the Court that Pierson would be appealing the Court's Memorandum Opinion and Order Granting Lead Plaintiff's Motions for Final Approval of Class Action Settlement, Plan of Allocation, and Attorneys' Fees and Expenses.

On August 29, 2014, Lead Plaintiff filed a Notice of Motion for an Appeal Bond (ECF No. 75), which the Court granted in part and denied in part, on November 17, 2014 (ECF No. 81) (the "Bond Order"). Pursuant to the Bond Order, the Court required Pierson to post a bond in the amount of \$3,000. *Id.* Pierson posted the bond on December 11, 2014.

On June 10, 2015, following briefing on Pierson's appeal, the Second Circuit entered a Summary Order denying Pierson's appeal and affirming the Court's orders on Lead Plaintiff's motion for final approval of the Settlement and Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and expenses. *See* ECF No. 82.

On June 24, 2015, Lead Plaintiff filed a Bill of Costs with the Second Circuit in the amount of \$2,624 (attached as Exhibit B to Pierson's October 5, 2015 Motion, ECF No. 85-3). On August 12, 2015, the Second Circuit ordered that costs be taxed in favor of Lead Plaintiff in the amount of \$1,727.20, leaving \$896.80 in appeal costs unreimbursed (attached as Exhibit C to Pierson's October 5, 2015 Motion, ECF No. 85-4).

Pierson now requests that the Court make payment to (1) Labaton Sucharow LLP in the amount \$1,727.20 (the costs awarded to Lead Plaintiff by the Second Circuit) and (2) Darrell

Palmer in the amount of \$1,272.80 (what remains after the costs awarded by the Second Circuit are deducted from the \$3,000 bond).

Lead Plaintiff does not oppose Pierson's request to have \$1,727.20 paid to Labaton Sucharow LLP and takes no position on the disposition of the remainder of the appeal bond.

Dated: October 16, 2015

Respectfully submitted,

LABATON SUCHAROW LLP

By: /s/ Jonathan Gardner

Jonathan Gardner

Eric J. Belfi

Mark Goldman

140 Broadway

New York, New York 10005

Telephone: (212) 907-0700

Facsimile: (212) 818-0477

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2015, I caused the foregoing Lead Plaintiff's Response to Motion for Return of Bond to be served electronically on all ECF participants.

s/ Jonathan Gardner

JONATHAN GARDNER